

February 3, 2022

VIA REGULATIONS.GOV

Attn: Kirsten Hillyer
Materials Recovery and Waste Management Division
Office of Resource Conservation and Recovery
United States Environmental Protection Agency

Re: Request for Extension of Comment Period on Proposed Decision:
Proposed Denial of Alternative Closure Deadline for Clifty Creek Power
Station
Docket No. EPA-HQ-OLEM-2021-0587

Dear Ms. Hillyer:

The Utility Solid Waste Activities Group (USWAG) hereby requests a 45-day extension to the comment period on EPA's Proposed Decision: Proposed Denial of Alternative Closure Deadline for Clifty Creek Power Station (Proposed Decision). USWAG believes that an additional 45 days will provide USWAG and its members, as well as other regulated entities and stakeholders, with an important opportunity to fully consider and provide meaningful comment on EPA's Proposed Decision.¹

As the Agency is aware, its Proposed Decision raises numerous complex technical and legal issues, including, among other things, highly technical questions involving the facility's groundwater monitoring system, alternative source demonstrations, the identification of potential corrective action measures and possible remedies. Responding to these issues will require facilities having to re-engage and coordinate with their qualified professional engineers in evaluating and responding to many of EPA's site-specific technical questions. In addition, the Proposed Decision raises many important interpretive issues involving CCR regulations central to the Agency's evaluation of the demonstration, many of which EPA has never put in writing before. These include, for example, the prescribed methods for meeting the rule's

¹ USWAG is an association of over one hundred and thirty utilities, utility operating companies, energy companies, and trade associations representing electric companies, utilities, and cooperatives. Several of USWAG's members generate and store coal combustion residuals (CCR) and are subject to EPA's CCR Part A rule, including IKEC's Clifty Creek Power Station that is the subject of the above-referenced Proposed Decision.

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closure performance standards and the degree of specificity required in making alternative source demonstrations. Thus, the issues raised in the Proposed Decision have broader implications for the regulated community beyond this specific decision for this specific facility.

Over the past year, when USWAG inquired as to the status of EPA's Part A reviews, the Agency repeatedly stated that the demonstrations were far more complex than the Agency had initially anticipated and were thus taking much more time to review. Due this complexity, EPA considered the Part A demonstrations for nearly fourteen months, despite explaining in the final Part A rule that it fully contemplated making final decisions for the Part A demonstrations before the April 11, 2021 cease receipt deadline. See 85 Fed. Reg. 53,516, 53,522 (Aug. 28, 2020). Now, more than nine months after EPA had originally planned to have issued final decisions, EPA has just released its proposed decision for IKEC's Clifty Creek Power Station, with no definite timeline for issuing a final decision.²

USWAG appreciates the complexity of the Part A submissions and the time needed for EPA to evaluate and issue the first round of Proposed Decisions. With that said, USWAG respectfully requests that the Agency extend the same consideration to the commentors on the first round of Proposed Decisions, including for IKEC's Clifty Creek Power Station. USWAG believes that an additional 45 days, while not commensurate with the amount of additional time EPA had to expend in reviewing the complete Part A submissions, is reasonable and will provide more time for stakeholders to meaningfully respond to the myriad of issues necessary for EPA to engage in reasoned decision-making.

This is the first time that the regulated community has had the opportunity to see, evaluate, and prepare responses to the large number of technical requirements and important legal interpretations regarding what EPA deems necessary to qualify for a successful demonstration under the Part A CCR rule. We understand that 49 complete Part A submissions remain pending before the Agency, with no definitive time schedule for when proposed decisions on these submissions will be published. We suspect, however, that many of the same issues raised in response to IKEC's Clifty Creek Power Station will be raised in the subsequent proposed decisions. IKEC's Clifty Creek Power Station, and USWAG in preparing comments on the proposed Clifty Creek Power Station decision, should not be prejudiced with a strict 30-day comment period for preparing comments on literally dozens of important technical and newly announced CCR rule compliance interpretations solely because this Proposed Decision is one of the first released by EPA.

² The Part A rule requires that, after the consideration of comments, EPA will issue a final decision on a Part A demonstration within four months of receiving a complete demonstration. 40 C.F.R. § 257.103(f)(3)(iv).

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For all these reasons, USWAG respectfully requests that EPA extend the comment period by an additional 45 days to provide stakeholders with more time to respond to the Proposed Decision. USWAG appreciates the opportunity to participate in this important determination, and further appreciates EPA's consideration of this extension request. If you need further information about this request, please contact Jim Roewer, USWAG Executive Director (jim.roewer@uswag.org) (202-508-5645).

Sincerely,

A handwritten signature in black ink, appearing to read 'Jim Roewer', with a long horizontal flourish extending to the right.

Jim Roewer
Executive Director